IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

OP.No. 33541 of 2000(R)

PETITIONER:

T.RADHAKRISHNAN NAMBIAR, AGED 63, S/O.ACHUTHAN NAMBIAR, RAJA BHAVAN, PARAYATH PARAMBA, PERUVAYAL VILLAGE, CHERUKULATHOOR PO., KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

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1. KARIMBANAYULLAKANDY APPU NAIR @ KRISHNAN NAIR, AGED 70, S/O.RAMAN NAIR, PERUVAYAL VILLAGE, CHERUKULATHOOR PO., KOZHIKODE

2. NARAYANI AMMA, AGED 80, KARIMBANAYULLAKANDY HOUSE, PERUVAYAL VILLAGE, CHERUKULATHOOR PO., KOZHIKODE
3. VASU NAIR, AGED ABOUT 68, S/O.KRISHNAN NAIR, THAZHATHEDATHIL HOUSE, PERUVAYAL VILLAGE, CHERUKULATHOOR PO., KOZHIKODE (DIED)

4. UNNIKRISHNAN NAIR, AGED ABOUT 48, FATHER'S NAME NOT KNOWN, THAZHATHEDATHIL HOUSE, PERUVAYAL VILLAGE, CHERUKULATHOOR PO., KOZHIKODE

5. SASIKUMAR, AGED ABOUT 40, FATHER'S NAME NOT KNOWN, THAZHATHEDATHIL HOUSE, PERUVAYAL VILLAGE, CHERUKULATHOOR PO., KOZHIKODE.

6. JANARDHANAN, AGED 46 YEARS

7. PARVATHY, AGED 44 YEARS

8. SIVADASAN AGED ABOUT 45 YEARS.

9. SUBRAMANIAN, AGED ABOUT 42 YEARS

RESPONDENTS 6 TO 9 ARE RESIDING AT
KARIMBANAYULLAKANDY HOUSE, PERUVAYAL, KOZHIKODE.

10. MUNSIFF OF KOZHIKODE-II, KOZHIKODE.

ADDL. 11. JANAKI AGED 50 YEARS, W/O.VASU NAIR,
THAZHATHEDATHIL HOUSE, CHERUKULATHUR AMSOM DESOM,
KOZHIKODE.

ADDL. 12. SATHYABHAMA, D/O.VASU NAIR,
THAZHATHEDATHIL HOUSE, CHERUKULATHUR AMSOM DESOM,
KOZHIKODE.

ADDL. 13. MADHUSOODANAN, S/O.VASU NAIR, DO. DO.

ADDL. 14. VINOD KUMAR, S/O. VASU NAIR, DO. DO.

ADDL. 15. MANOJ KUKAR, S/O.VASU NAIR, DO. DO.

LEGAL HEIRS OF THE 3RD RESPONDENT ARE IMPLEADED AS ADDL.

RESPONDENTS 11 TO 15 AS PER ORDER DT.5.9.07 IN CMP.2619/02

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.57317/2000 IN OP.33541/2000

DISMISSED

6.9.2007 SD.- PIUS C.KURIAKOSE, JUDGE

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.585/95 OF MUNSIFF COURT-II, KOZHIKODE.

EXT.P2 – TRUE COPY OF COMMN. REPORT SUBMITTED BY ADV.COMMR.

EXT.P3 – TRUE COPY OF OBJECTION SUBMITTED BY PETR. IN THE COMMISSIONER'S REPORT.

EXT.P4 – TRUE COPY OF APPLICATION FILED BY PETR. TO REMIT THE REPORT AND PLAN AS I.A.4142/2000 IN O.S.585/95

EXT.P5 – TRUE COPY OF ORDER IA.4141/2000 AND 3530/00 IN O.S.585/95

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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O.P.No.33541 OF 2000

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DATED THIS THE 6TH SEPTEMBER, 2007

J U D G M E N T

This Original Petition is remaining defective on the reason that service of notice on 5th respondent is not completed. But I find that in the court below, the 5th respondent was sailing along with the 4th respondent who is already served. Service on the 5th respondent is declared sufficient.

2. Under challenge in this Original Petition under Article 227 of the Constitution of India is Ext.P5 order by which the learned Munsiff dismissed the applications filed by both the plaintiff and the defendants for remitting the advocate commissioner's report and plan. Plaintiff is the petitioner in this case and his grievance is that the advocate commissioner has not identified the B-schedule property in respect of which recovery was sought for. The learned Munsiff has found in the impugned order that though the commissioner has not reported that he identified the property, as a matter of fact, the property is separately marked in the plan submitted by him. The learned Munsiff has also observed that in any event it is open to the petitioner to cross-examine the commissioner or to adduce fresh evidence during trial and substantiate the contention that identification of the property

by the commissioner is not proper.

3. Having gauged Ext.P5 by the standards applicable to the jurisdiction of this Court under Article 227, I am not prepared to say that Ext.P5 is vitiated to the extent of justifying interference under the visitorial jurisdiction. I confirm Ext.P5. However, it is reiterated that it will be open to the petitioner to cross-examine the advocate commissioner or to adduce further evidence to show that his report is vitiated on account of non-identification of the B-schedule property or any other reason. After the entire evidence in the case is recorded, the parties will be heard initially on the question of acceptability of the commissioner's report. Confirmation of Ext.P5 by this Court will not stand in the way of the court below passing appropriate orders, if the court is convinced on the evidence that the commissioner's report is defective in any respect.

The Original Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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PIUS C.KURIAKOSE, J.

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O.P.NO.33541 OF 2000

JUDGMENT

6TH SEPTEMBER, 2007

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